

1 CANDIE M. DIBBLE, WSBA #42279  
2 Assistant Attorney General  
3 Office of the Attorney General  
4 Corrections Division  
5 1116 West Riverside Avenue, Suite 100  
6 Spokane, WA 99201-1106  
7 (509) 456-3123

Honorable Rosanna Malouf Peterson

8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF WASHINGTON**

10 THOMAS W.S. RICHEY,

11 Plaintiff,

12 v.

13 JONI AIYEKU,

14 Defendant.

NO. 4:16-cv-05047-RMP

DEFENDANTS' RESPONSE TO  
COURT'S ORDER TO SHOW  
CAUSE

15 The Defendant respectfully submit their response to the Court's show cause  
16 order. ECF No. 68.

17 **RESPONSE**

18 Richey filed a request with the Clerk asking whether this case was stayed  
19 and requesting trial dates. Richey noted that the Defendants "lost" in his similar  
20 lawsuit (*Richey v. Dahne*) and that the Ninth Circuit Court's stay of the appeal in  
21 this case was based on the outcome of the Supreme Court's decision in *Richey v.*  
22 *Dahne*.

1           However, Richey failed to mention that there is a current motion to vacate  
 2     the *Dahne* order due to Richey’s false representations. Staff intercepted a letter  
 3     Richey wrote to his wife celebrating that the basis of his grievance was the  
 4     “creation of a setup” as there was “never an obese Hispanic guard” who denied  
 5     him a shower and that his grievance was a total “fabrication” in order to create a  
 6     lawsuit claim. The *Dahne* Court has ordered an evidentiary hearing to determine  
 7     whether Richey willfully deceived the Court.<sup>1</sup>

8           In addition, Aiyeku still intends to go forward with her appeal in the Ninth  
 9     Circuit Court on this Court’s decision on the issue of Qualified Immunity. Aiyeku  
 10    provided the Ninth Circuit Court with a status report on May 16, 2019 after the  
 11    Supreme Court’s decision in the *Dahne* matter. The Ninth Circuit Court has not set  
 12    a briefing schedule although Aiyeku will likely now inform the appeals Court of  
 13    the evidentiary hearing set in the *Dahne* matter.

14          Because there are unresolved issues in the *Dahne* matter, which may still  
 15    have bearing on this lawsuit, and Aiyeku has a right of appeal on the issue of  
 16    Qualified Immunity, she would object to the setting of a trial date in this Court.  
 17    *Siebert v. Gilley*, 500 U.S. 226, 232–33 (1991) (recognizing an entitlement not to  
 18    stand trial or face the other burdens of litigation, conditioned on the resolution of  
 19    the essentially legal question whether the conduct of which the plaintiff complains

---

21           <sup>1</sup> See *Richey v. Dahne*, United States District Court, Western District of  
 22    Washington Cause No: C-12-5060-BHS, ECF Nos. 94, 95 and 108.

1 violated clearly established law which “is effectively lost if a case is erroneously  
2 permitted to go to trial.”).

3 **CONCLUSION**

4 Aiyeku requests the Court continue to stay this matter because Aiyeku’s  
5 appeal is still pending and the decisions in the *Dahne* case may be vacated. Both  
6 decisions, especially the Ninth Circuit decision in this case, will have a direct  
7 impact on these proceedings.

8 RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of July, 2019.

9 ROBERT W. FERGUSON  
10 Attorney General

11  
12 s/ Candie M. Dibble  
13 CANDIE M. DIBBLE, WSBA #42279  
14 Assistant Attorney General  
15 Corrections Division  
16 1116 West Riverside Avenue, Suite 100  
17 Spokane, WA 99201-1106  
18 (509) 456-3123  
19 [Candie.Dibble@atg.wa.gov](mailto:Candie.Dibble@atg.wa.gov)  
20  
21  
22

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing Defendants' Response to Court's Order to Show Cause with the Clerk of the Court using the CM/ECF system, and I certify that I mailed by United States Postal Service the document to the following non CM/ECF participants:

THOMAS W.S. RICHEY DOC #929444  
MONROE CORRECTIONAL COMPLEX  
WASHINGTON STATE REFORMATORY  
PO BOX 777  
MONROE, WA 98272-0777  
Email: [docmccinmatefederal@doc1.wa.gov](mailto:docmccinmatefederal@doc1.wa.gov)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 25<sup>th</sup> day of July, 2019, at Spokane, Washington.

s/ Patty Willoughby  
PATTY WILLOUGHBY  
Legal Assistant III  
Corrections Division  
1116 West Riverside Avenue, Suite 100  
Spokane, WA 99201-1106  
(509) 456-3123  
[Patty.Willoughby@atg.wa.gov](mailto:Patty.Willoughby@atg.wa.gov)